

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JESUS GUTIERREZ,

Petitioner,

vs.

No. CIV 17-0402 JB/KRS

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

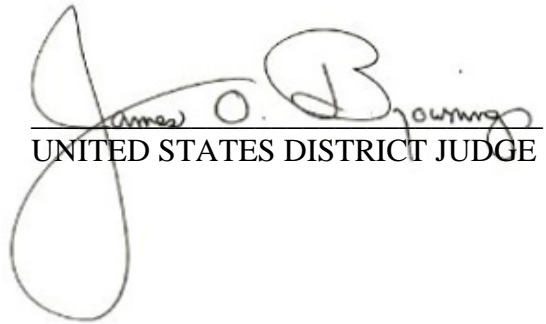
THIS MATTER comes before the Court on a Letter from Petitioner Jesus Gutierrez, filed March 28, 2017 (Doc. 1)(“Petition”). The Petition appears to request pretrial confinement credit toward Jesus Gutierrez’ federal sentence in matter No. CR 10-2602 MCA. See Petition at 1-2. The Court informed Gutierrez that “[a] challenge to the execution of a sentence, such as a request for pretrial confinement credit, should be brought under 28 U.S.C. § 2241 and must be filed in the district in which the prisoner is confined.” Order to Cure Deficiencies at 1-3, filed April 13, 2017 (Doc. 2)(“Order to Cure”). The Court further informed Gutierrez that if he wished to pursue relief under 28 U.S.C. § 2241, he must submit, on or before May 13, 2017: (i) a § 2241 petition on the proper form that complies with rule 2 of the Rules Governing Section 2254 Cases in the United States District Courts; and (ii) the \$5.00 filing fee or an Application to Proceed in District Court Without Prepaying Fees or Costs pursuant to 28 U.S.C. § 1915. See Order to Cure at 1-3. The Court warned Gutierrez that failure to cure the designated deficiencies may result in the dismissal of this proceeding without further notice.

Gutierrez did not respond to the Court’s Order to Cure and, therefore, on May 31, 2017 the Court ordered Gutierrez, on or before July 3, 2017, to comply with the Court’s April 13,

2017, Order to Cure or to otherwise show cause why the Court should not dismiss this proceeding. See Order to Show Cause at 1-2, filed May 31, 2017 (Doc. 6)(“Cause Order”). The Court again warned Gutierrez that “[f]ailure to comply with the Court’s April 13, 2017 Order to Cure Deficiency within thirty (30) days of the date of this order, or to show cause for the failure to do so, will result in the dismissal of this proceeding without prejudice without further notice.” Cause Order at 1-2.

Gutierrez’ response was due on or before July 3, 2017, but as of this date, Gutierrez has not complied with the Court’s April 13, 2017, Order To Cure, shown cause why the Court should not dismiss this proceeding, or otherwise responded to the Court’s Cause Order. Therefore, the Court will dismiss this proceeding without prejudice pursuant to rule 41(b) of the Federal Rules of Civil Procedure for failure to comply with the Court’s orders.

IT IS ORDERED that: (i) this proceeding is dismissed without prejudice; and (ii) Final Judgment will be entered.



UNITED STATES DISTRICT JUDGE

Parties:

Jesus Gutierrez
FCI Victorville Medium
Adelanto, California

Pro se Plaintiff